

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

WILLIAM STAPLES, )  
Plaintiff, )  
v. ) Case No. CIV-10-1007-C  
UNITED STATES OF AMERICA, )  
Defendant. )

**REPORT AND RECOMMENDATION ON THE  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

The Plaintiff is a federal prisoner who is suing the federal government for negligence and violation of the United States Constitution. The Defendant moved to dismiss, and the undersigned has recommended that the Court grant the motion and dismiss the action without prejudice for lack of jurisdiction.

Mr. Staples has moved for summary judgment. The Court should deny the motion for two reasons. First, because the Court lacks jurisdiction, it is without the power to grant summary judgment to Mr. Staples.<sup>1</sup> Second, the suggested dismissal of the entire action would moot Mr. Staples' summary judgment motion.<sup>2</sup>

<sup>1</sup> See *RMP Consulting Group, Inc. v. Datronic Rental Corp.*, 189 F.3d 478, 1999 WL 617690, Westlaw op. at 3 (10th Cir. Aug. 16, 1999) (unpublished op.) (“Because the district court never had jurisdiction over the case, it had no power to rule on any motions or enter any judgment in the case.” (citations omitted)).

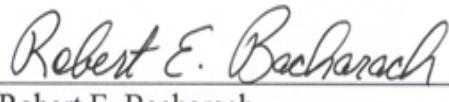
<sup>2</sup> See *Jones v. Bass*, 149 Fed. Appx. 764, 765-66 (10th Cir. Sept. 2, 2005) (unpublished op.) (affirming the dismissal of all claims against the defendants and denial of the plaintiff's summary judgment motion on grounds of mootness); *Hutchinson v. Pfeil*, 211 F.3d 1278, 2000 WL 345688, Westlaw op. at 1, 5 (10th Cir. Apr. 4, 2000) (unpublished op.) (same).

For both reasons, the Court should deny Mr. Staples' summary judgment motion.

The parties enjoy the right to object to the present report and recommendation. Any such objection must be filed with the Clerk of this Court by March 24, 2011.<sup>3</sup> The failure to timely object would foreclose appellate review of the suggested ruling.<sup>4</sup>

The referral is discharged.

Entered this 7th day of March, 2011.

  
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Robert E. Bacharach  
United States Magistrate Judge

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<sup>3</sup> See 28 U.S.C.A. 636(b)(1) (2010 supp.); Fed. R. Civ. P. 6(d), 72(b)(2).

<sup>4</sup> See *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); cf. *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").